

REMARKS

This application has been amended in a manner that is believed to place it in condition for allowance at the time of the next Official Action.

Claims 15-18, 20-21, and 23-24 are pending in the present application. Claims 15 and 20 have been amended to incorporate the subject matter of claims 19 and 22, respectively. Claims 19 and 22 have been canceled. It is believed that no new matter has been added to the present application.

In the outstanding Official Action, claim 22 was rejected under 35 USC §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As noted above, claim 22 has been canceled. The subject matter of claim 22 now appears in claim 20. It is believed that claim 20 has been amended in a manner so that the recited chemical structure is definite to one of ordinary skill in the art. It is believed that claims 15-18, 209-21 and 23-24 are definite to one of ordinary skill in the art.

Claims 15-18, 20, 21, 23, and 24 were rejected under 35 USC §103(a) as allegedly being unpatentable over the combined

teachings of IWASAKI 4,681,900 and NIELSEN et al. 6,180,566 This rejection is respectfully traversed.

In imposing the rejection, the Official Action acknowledges that the specific ranges for the degree of ethoxylation are not taught by the cited publications. The Official Action contends that one of ordinary skill in the art would be able to determine an appropriate range of ethoxylation.

However, as the Examiner is aware, a particular parameter must first be recognized as a result-effective variable, i.e., a variable which achieves a recognized result, before the determination of the optimum or workable ranges of the variable may be characterized as capable of being optimized or a matter of routine experimentation. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977). Neither IWASAKI nor NIELSEN et al. disclose or suggest adjusting the degree of ethoxylation in a manner as set forth in the claimed invention. As a result, applicants believe that the outstanding Official Action fails to meet its burden in showing that one of ordinary skill in the art would be capable of or have the motivation to modify the range of ethoxylation as set forth in the claimed invention.

Nevertheless, in the interest of advancing prosecution, claims 15 and 20 have been amended to recite that the

phytosanitary active principle is a compound of chemical structure derived from the radical:

-C(=O)-CH₂-N-CH₂-P(=O), in the form of a water-soluble salt.

Applicants believe that the cited publications, alone or in combination with each other, fail to teach the claimed invention. Neither publication discloses a phytosanitary active principle with the chemical structure as claimed. Indeed, the outstanding Official Action indicated that claims 19 and 22 would be allowable if rewritten in independent form. As noted above, claim 15 has been amended to recite the subject matter of claim 19 and claim 20 has been amended to recite the subject matter of claim 22. Moreover, applicants note that claim 22 was not rejected in view of the proposed combination of IWASAKI and NIELSEN et al. Thus, it is believed that the present amendment obviates the rejection based on the proposed combination of IWASAKI and NIELSEN et al.

Thus, in view of the present amendment and the foregoing remarks, therefore, it is believed that this application is now in condition for allowance, with claims 15-18, 20-21 and 23-24, as presented. Allowance and passage to issue on that basis are accordingly respectfully requested.

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The Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 25-0120 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17.

Respectfully submitted,

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